



Governor's Juvenile Law Commission

PLANNING, POLICY, & SYSTEMS DEVELOPMENT SUBCOMMITTEE

SUBCOMMITTEE VOTING MEMBERSHIP

The following were the voting members of the PPSD Subcommittee:

Co-Chairs:

Judge Steve David, Boone County Circuit Court

Ms. Allison Wharry, Indiana Health & Hospital Association

Members:

Mr. Stan Bippus, Salem Community Schools

Ms. Jane Bisbee, Deputy Director, FSSA/DFC

Ms. Becky Bowman, Indiana Department of Education

Mr. Bill Curtis, Hillcrest-Washington Home

Mr. Jamie Groves, Huntington County Prosecutor's Office

Dr. Fran Hardy, Indiana University School of Law, Indianapolis

Mr. Jim Higdon, Johnson County Juvenile Detention Facility

Ms. Anne Jordan, Indiana Judicial Center

Ms. Amy Karozos, Office of the State Public Defender

Ms. Suzanne Miller, Johnson County Probation Department

OVERVIEW & SUMMARY OF RECOMMENDATIONS

The membership of the Planning, Policy, and Systems Development Subcommittee respectfully submits the following 12 recommendations to be considered by the Governor's Juvenile Law Commission membership. In developing these recommendations, the PPSD Subcommittee utilized the cornerstone issues, which guide the overall work of the Governor's Juvenile Law Commission, as well as the results of the "Potential JLC Issues Survey" completed by the full JLC membership to determine the specific issues that would guide recommendation development. (Please see the attached *PPSD Recommendations Appendix* for the "Ranked Topical Issues That Were Recommended By Commission Members to PPSD Subcommittee" document.) Members will note that the first issue identified involved understanding the "ultimate goal of the juvenile court/juvenile justice system". Upon review of the current purpose clause of Indiana's juvenile code it became clear that this purpose clearly fit with the guiding principles (cornerstones) of the JLC and that this purpose would guide any subsequent recommendations to be developed through the PPSD Subcommittee. The policy and purpose clause of the Indiana Juvenile Code is to:

- ☞ Recognize the importance of family and children in our society.
- ☞ Recognize the responsibility of the state to enhance the viability of children and family in our society.
- ☞ Acknowledge the responsibility each person owes to the other.

- 🔑 Strengthen family life by assisting parents to fulfill their parental obligations.
- 🔑 Ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation.
- 🔑 Remove children from families only when it is in the child's best interests or in the best interests of public safety.
- 🔑 Provide for adoption as viable permanency plan for children who are adjudicated children in need of services.
- 🔑 Provide a juvenile justice system that protects the public by enforcing the legal obligations that children have to society and society has to children.
- 🔑 Use diversionary programs when appropriate.
- 🔑 Provide judicial procedures that ensure fair hearings; recognize and enforce the legal rights of children and their parents; and recognizes and enforces the accountability of children and parents.
- 🔑 Promote public safety and individual accountability by the imposition of appropriate sanctions.
- 🔑 Provide a continuum of services developed in a cooperative effort by local governments and the state.

The following recommendations were developed and discussed using a format that provided subcommittee members with balanced background information regarding the issue so that during meetings members were able to thoroughly discuss, develop and then vote on each recommendation. Each of the recommendations summarized below and described in detail on the following pages, was identified and strongly recommended to be forwarded for consideration by the full Governor's Juvenile Law Commission membership. The recommendations are as follows:

Recommendation #1 (Three Tiered System/Blended Sentencing)

It is recommended that Indiana law be changed from a two-tiered (juvenile court - adult court jurisdiction) system to reflect a three-tier system consisting of: (1) juvenile court jurisdiction, (2) youthful offender/extended jurisdiction under juvenile court jurisdiction, and (3) adult court jurisdiction. It is further recommended that the Governor's Juvenile Law Commission review, eliminate, and/or reduce the number of direct file offenses (IC 31-30-1-4) as part of the development of a three-tier system.

Recommendation #2 (Juvenile Court Jurisdiction)

It is recommended that for all traffic offenses, infractions, and ordinance violations involving juveniles under the age of 18 that the juvenile court have exclusive, original jurisdiction in such cases.

Recommendation #3 (Competency to Stand Trial)

It is recommended that legislation be drafted that shall provide procedures for the determination of competence to stand trial (when competency issues are raised) including the possible dispositional alternatives of juveniles found to be incompetent. Such legislation should be informed by the work and recommendations of the Juvenile ICST Program (FSSA/DMHA), the "Children, Mental Health and the Law" Summit of the Indiana State Bar Association and models that have been successfully implemented in other states (e.g. Virginia, California, and Texas.)

Recommendation #4 (Juvenile Record Suspension)

It is recommended that Indiana Code I.C. 35-50-2-2.1 be repealed.

Recommendation #5 (JJDP Code Changes)

Indiana code should be reviewed and, if necessary, revised to ensure that it is not in violation with the Juvenile Justice and Delinquency Prevention Act of 2002.

Recommendation #6 (Detention Decision-making Criteria/Right To Bail)

It is recommended that Indiana develop objective criteria to aid in the determination of whether to detain juveniles in secure detention. It is also recommended no changes be made to I.C. 31-37-6-9 regarding a juvenile's right to bail.

Recommendation #7 (Change of Judge)

It is recommended that there be no change in the current statutory requirements for a change of judge for delinquency cases (quasi-criminal = "for cause") and CHINS, paternity, & TPR (civil = no cause).

Recommendation #8 (Time Specific Limitations)

It is recommended that a new statute be added to the Indiana Code (31-34 and 31-37) that would ensure that dispositional hearings in both CHINS and delinquency cases take place no later than 30 days after the adjudication, unless waived by counsel or family. It is further recommended that a similar provision be added to the juvenile code that would establish the same time limit for modification of dispositions for both CHINS and delinquency proceedings.

It is recommended that a new statute be added to the Indiana Code (31-34 and 31-37) that would ensure that the initial hearing take place not later than 10 days from the time the child is taken into custody and no later than 30 days from the filing of the petition if the child is not taken into custody.

It is recommended that a new statute be added to the Indiana Code (31-34) to mirror the current delinquency code (31-37-11-2) which requires that if a child is in custody and a petition alleging delinquency has been filed, a fact-finding hearing must occur no later than 20 days after the petition is filed excluding Saturdays, Sundays, and legal holidays and that if not in custody the fact-finding hearing must occur no later than 60 days after the petition is filed, excluding Saturdays, Sundays, and legal holidays. It is further recommended that a similar provision be adopted to mandate the same time limits for modification proceedings as well for both CHINS and delinquency.

Recommendation #9 (Determinate Sentencing)

It is recommended that the laws regarding determinate sentencing be eliminated from the Indiana Juvenile Code.

Recommendation #10 (Consecutive Detention Adjudications)

It is recommended that Indiana Code be amended so that the court may not order consecutive periods of confinement in a juvenile detention facility during a single disposition or for related offenses.

Recommendation #11 (Expulsion Due Process/ADM Count)

It is recommended that H.B. 1228 be passed in its entirety. It is further recommended that schools use a graduated sanctions disciplinary program that allows administrators to discipline students on a case-by-case basis.

It is also recommended that IC 21-3-6-1.1 be amended to include an additional ADM (average daily membership) Count to be conducted by Indiana school corporations on February 1st of each year.

Recommendation #12 (Parental Participation)

It is recommended that new statutory language be added to both the CHINS and delinquency statutes which states that: "The court having juvenile court jurisdiction may order parental participation if it is found with clear and convincing evidence that the health, safety, and well-being of the child(ren) in the home requires an order of parental participation pre-adjudicatory. If a child is out of the home (in custody) the court having juvenile court jurisdiction may order pre-adjudicatory parental participation if there is found to be clear and convincing evidence that such parental participation is necessary to facilitate the safe reunification of the child(ren) with the family/guardian.

It is further recommended that additional language be added that would ensure that any violation of a pre-adjudicatory order of parental participation would not be admissible in subsequent criminal or civil proceedings.

Detailed descriptions of the preceding 12 recommendations are provided on the following pages and include the following elements for each recommendation: a) recommendation language, b) background/justification, c) positives/support, d) negatives/opposition (barriers to implementation), e) estimated fiscal impact/recommended implementation timeline, and f) vote results. Supporting documentation referenced in the recommendations is included in the attached *PPSD Recommendation Appendix*.

Subcommittee Recommendation (#1)

Recommendation: It is recommended that Indiana law be changed from a two-tiered (juvenile court - adult court jurisdiction) system to reflect a three-tier system consisting of: (1) juvenile court jurisdiction, (2) youthful offender/extended jurisdiction under juvenile court jurisdiction, and (3) adult court jurisdiction. It is further recommended that the Juvenile Law Commission review, eliminate, and/or reduce the number of direct file offenses (IC 31-30-1-4) as part of the development of a three-tier system.

Background/Justification: The three tier system, or blending laws, has been instituted in many states throughout the United States. There are several different types of blending laws being used in different states, the Subcommittee is recommending the state investigate implementing a form of juvenile blended sentencing that would best fit with the State's priorities and needs. Juvenile blended sentencing models will be briefly highlighted below. The summary below is based the Office of Juvenile Justice Delinquency Prevention's article titled Technical Assistance to the Juvenile Court Special Project Bulletin, "Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws". This article is available on the web at www.ncjj.org.

Juvenile blended sentencing is when the offender stays in juvenile court, but the juvenile court is empowered to impose adult criminal sanctions on certain categories of serious juvenile offenders. Most states with this type of scheme authorize juvenile courts to combine a juvenile disposition with a suspended criminal sentence. If the juvenile cooperates with the juvenile disposition, he or she will remain in the juvenile system. If the juvenile does not cooperate with the juvenile disposition, he or she will be sent to the adult system.

States have also implemented many different threshold criteria qualifying juveniles for blended sentencing. Some states use the exact same eligibility as their transfer/waiver laws. This is said to provide a more flexible, less severe alternative to waiving juveniles to adult court, but it might apply to juveniles who fit the statutory criteria to be waived to adult court, but really were not "waiver-worthy." Some states have narrowly drawn their blended sentencing criteria so that only a portion of the pool of juveniles who may be waived to adult court actually receive blended sentencing. Other states have expanded the criteria from existing transfer/waiver laws which expands the pool of juveniles that might potentially be exposed to adult sanctions. Finally, one state does not have any transfer categories for children under the age of 14, but uses blended sentencing options for juveniles who commit certain offenses under the age of 14. These juveniles will then be exposed to adult sanctions once they reach the threshold age of 14.

Positives/Support: 1. Depending on the model chosen a three-tiered system can provide youthful offenders with a "second chance" to be rehabilitated and provide judges with wider latitude in making these determinations by keeping youth under juvenile court jurisdiction with the possibility of adult court consequences. 2. Youthful offender tiered system could be a useful tool for older youthful offenders who are about to "age-out" of the system and while they may not be "waiver worthy", a youthful offender tier would allow them to remain under juvenile court jurisdiction, but provide for consequence under adult court jurisdiction should violations occur after reaching the age of majority.

Negatives/Opposition (Barriers to Implementation): 1. Depending on the model used (beginning under adult court jurisdiction rather than juvenile court jurisdiction) a three-tiered system could lead to substantial net-widening with regards to the number of juveniles under adult court jurisdiction. 2. Determining responsibility within county for payment of "adult" services provided to juveniles under the second tier. Related to this is the issue of determining how long a county would be responsible under juvenile budgets to play for services of extended jurisdiction juveniles (upper age limit issue).

Estimated Fiscal Impact/Recommended Implementation Timeline: The costs of implementing a three-tier system should theoretically only involve the potential of resource shifting between and among the adult and juvenile court jurisdictions if properly implemented (i.e. developing a system that does not lead to net-widening among either system, but instead works with juveniles that would have otherwise already have been a part of either of these systems.). The recommended timeline for implementation would be development and introduction of legislation for the upcoming legislative session with the system to be implemented by July 2007.

Vote Results:

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Strongly Recommended (9-0)
Recommended (Majority Vote)
Noted (30% or More Vote)
Not Identified (<30% Vote)

Subcommittee Recommendation (#2)

Recommendation: It is recommended that for all traffic offenses, infractions, and ordinance violations involving juveniles under the age of 18 that the juvenile court have exclusive, original jurisdiction in such cases.

Background/Justification: IC 31-30-1-2

Applicability of juvenile law to infractions and violations of traffic law and ordinances

Sec. 2. Except as provided in IC 33-5-29.5-4, IC 33-5-35.1-4, and section 8 of this chapter, the juvenile law does not apply to the following:

(1) A child at least sixteen (16) years of age who allegedly committed a violation of a traffic law, the violation of which is a misdemeanor, unless the violation is an offense under IC 9-30-5.

(2) A child who is alleged to have committed a violation of a statute defining an infraction, except as provided under IC 7.1-5-7.

(3) A child who is alleged to have committed a violation of an ordinance.

(4) A child who:

(A) is alleged to have committed an act that would be a crime if committed by an adult; and

(B) has previously been waived under IC 31-30-3 (or IC 31-6-2-4 before its repeal) to a court having misdemeanor or felony jurisdiction.

Positives/Support: 1. By having traffic offenses, infractions, and ordinance violations originate in the juvenile court this would ensure that the juvenile court(s) in a particular jurisdiction would be knowledgeable regarding all violations of the law by juveniles within that jurisdiction providing for a more comprehensive approach to addressing delinquency intervention.; 2. Having these low-level offenses originate in juvenile court would help to reduce the incidence of juveniles being inappropriately placed in adult jails and lock-ups in contact with adult offenders. ; 3. Such offenses would theoretically be treated more seriously under juvenile court jurisdiction. This should increase the likelihood that juvenile offenders would be held accountable, supporting the tenets of accountability-based models for the juvenile justice system and increasing the likelihood that juveniles would receive services/treatment.

Negatives/Opposition (Barriers to Implementation): 1. Placing original jurisdiction of traffic offenses, infractions, and ordinance violations has the potential of increasing court dockets and probation cases/workload as these types of cases are currently originating in adult or city courts.

Estimated Fiscal Impact/Recommended Implementation Timeline: While there is a potential to increase the juvenile court dockets and probation caseloads (in all counties except Marion and Lake Counties where these offenses already originate in juvenile court), this would technically be offset by the subsequent decrease in adult and city courts that are currently handling these types of cases, thus allowing for a shifting of resources to address the changes. With regards to the probation caseloads, this would likely increase the number of information adjustment cases which require little to no supervision. It is proposed that this recommendation be implemented as a change to the Indiana Code to go into effect July 1, 2005.

Vote Results:

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Strongly Recommended (9 to 0)
Recommended (Majority Vote)
Noted (30% or More Vote)
Not Identified (<30% Vote)

Subcommittee Recommendation (#3)

Recommendation: It is recommended that legislation be drafted that shall provide procedures for the determination of competence to stand trial (when competency issues are raised) including the possible dispositional alternatives of juveniles found to be incompetent. Such legislation should be informed by the work and recommendations of the Juvenile ICST Program (FSSA/DMHA), the "Children, Mental Health and the Law" Summit of the Indiana State Bar Association and models that have been successfully implemented in other states (e.g. Virginia, California, and Texas.)

Background/Justification: In May of this year, the Indiana Supreme Court decided *In the Matter of K.B., D.G., D.C.B., and J.J.S.*. Four juveniles found to be incompetent to stand trial (mainly due to mild mental retardation) by the Marion County Juvenile Court and order to commitment to the Division of Mental Health and Addictions (DMHA) in an appropriate psychiatric institution. The issue at hand for the case was the Court's use of the adult competency statute (I.C. 35-36-3-1) based on an assertion that because the juvenile code provides no explicit procedure for determining the competency of children the adult statute applies. The State, through FSSA/DMHA, filed a motion to intervene in the action. The Supreme Court concluded that while a juvenile does have the constitutional right to have his/her competency determined before he/she is subjected to delinquency proceeding, that the adult competency statute is not the appropriate vehicle for this determination. Instead the court argued that I.C. 31-32-12-1, which provides the court with the authority to order mental examinations or treatment of a juvenile, is sufficient to the task of determining competency to stand trial. The Supreme Court indicated that: "In essence the code affords juvenile courts a degree of discretion and flexibility (under the principle of *Parens Patriae*), unparalleled in the criminal code, to address the needs of children and to act in their best interests. That flexibility is severely compromised by resorting to the procedures set forth in the adult competency statute when resolving questions concerning juvenile competency." The Court went on to state that: "Although the statute does not specifically mention 'competency', given a juvenile court's flexibility in addressing the needs of children and acting in their best interests, we conclude that this statute allows for the examination and/or treatment of a child after a delinquency petition has been filed in order to determine the child's competency." The actual procedures for a child's competency to stand trial were not discussed, but are being addressed by the Juvenile ICST Program led by the Division of Mental Health & Addictions. Models in other states, Virginia in particular, have been investigated and the program is in the final stages of developing recommendations for the policies and procedures, including specific training requirements and evaluation standards/procedures for determining juvenile incompetency and subsequent treatment policies and procedures. This issue is also scheduled to be a key component of the Indiana State Bar Association's "Summit on Children, Mental Health, and the Law" on August 27th. The Competency to Stand Trial workgroup will be focusing on two main areas: "1) The MacArthur Study, which exposed the disturbing fact that many juveniles (in some age groups, the majority of juveniles) are not competent to stand trial, and how Indiana should respond to the issue of juvenile competence to stand trial.; and 2) ...a discussion of the "K.G." case and what it means for the

immediate future in Indiana juvenile court, and a look at what the ideal juvenile competency model for Indiana should include."

Positives/Support:

1. Providing for specific statutory procedures for determining the competency status of juveniles in the juvenile court process will allow for judges to avoid the need to "go around" the system or circumvent the current juvenile code in order to meet the needs of juveniles entering their courts.; 2. By providing the court with specific procedures in handling juveniles with substantial and debilitating mental illness that make them incompetent to understand the proceedings or aid in their defense, this provides the juvenile court with another tool to proactively address the behaviors that may be contributing to such juveniles involvement in delinquent acts or deviant behaviors.

Negatives/Opposition (Barriers to Implementation):

1. There are concerns regarding procedures once a juvenile has been found to be incompetent to stand trial and are then unable, through services, to become competent to stand trial. 2. The costs of such changes could be substantial and there are concerns regarding system capacity to meet the treatment needs of the youth found incompetent to stand trial (e.g. availability of appropriate placements or community-based services). 3. Questions regarding juveniles rights once they are found to be competent regarding the amount of time potentially spent in out-of-home-placements receiving services to achieve competency or aging-out of the juvenile court jurisdiction during services to achieve competency.

Estimated Fiscal Impact/Recommended Implementation Timeline: With regards to the development of competency guidelines it is recommended that as an initial step draft guidelines be included in the Judicial Benchbook through the Indiana Judicial Center and that this implementation could then help guide the development of formal guidelines to be introduced in the legislature. The development and implementation of the guidelines within the judicial system would not, in and of itself, have substantial fiscal impacts. Fiscal impacts would depend on the eventual agreed upon incompetency to stand trial guidelines; specifically there could theoretically be substantial impacts with regards to the treatment costs incurred by juveniles found to be in need of restoration services in order to restore competency. The main issue is the need to have further thoughtful study and substantial planning to implement both the incompetency guidelines and the subsequent system-delivery model to meet the treatment needs identified through the incompetency process, particularly for those juveniles found to be unrestorable. The ISBA's "Summit on Children, Mental Health and the Law" was recently completed and the results of the incompetency to stand trial tract will be released with the full Summit report. These results should inform the continued work of the Juvenile ICST Program at DMHA and this work should be coordinated with the Juvenile Justice Improvement Committee of Juvenile Court Judges administered by the Indiana Judicial Center to ensure that the guidelines, eventual legislation, and a service delivery system amenable to both the judicial and mental health systems can be developed. It is recommended that the collective work of these groups be completed by January 1, 2005 so that draft guidelines can be incorporated into the Judicial Benchbook in early Spring 2005 leading to the development and introduction of legislation to formally enact the guidelines by July 1, 2006.

Vote Results:

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Strongly Recommended (9-0)
Recommended (Majority Vote)
Noted (30% or More Vote)
Not Identified (<30% Vote)

PLANNING, POLICY, & SYSTEMS DEVELOPMENT SUBCOMMITTEE

Subcommittee Recommendation (#4)

Recommendation: It recommended that Indiana Code I.C. 35-50-2-2.1 be repealed.

Background/Justification: In order to enhance a criminal sentence or require, by statute, that the offender spend the minimum amount of time in jail rather than suspend the entire sentence adult criminal courts are able to consider prior juvenile adjudications, although juveniles are not afforded the right a jury trial in determining these adjudications. Indiana has not created a right to a jury trial in juvenile delinquency proceedings. I.C. 31-37-13-1 states "unless the allegations of a petition have been admitted, the juvenile court shall hold a factfinding hearing."

I.C. 35-50-2-2.1 Suspension; persons with juvenile record

(a) Except as provided in subsection (b) or section 2 of this chapter, the court may not suspend a sentence for a felony for a person with a juvenile record when:

(1) the juvenile record includes findings that the juvenile acts, if committed by an adult would constitute:

(A) one (1) Class A or Class B felony;

(B) two (2) Class C or Class D felonies; or

(C) one (1) Class C and one (1) Class D felony; and

(2) less than three (3) years have elapsed between commission of the juvenile acts that would be felonies if committed by an adult and the commission of the felony for which the person is being sentenced.

(b) Notwithstanding subsection (a), the court may suspend any part of the sentence for a felony, except as provided in section 2 of this chapter, if it finds that:

(1) the crime was the result of circumstances unlikely to recur;

(2) the victim of the crime induced or facilitated the offense;

(3) there are substantial grounds tending to excuse or justify the crime, though failing to establish a defense; or

(4) the acts in the juvenile record would not be Class A or Class B felonies if committed by an adult, and the convicted person is to undergo home detention under I.C. 35-38-1-21 instead of the minimum sentence specified for the crime under this chapter.

The Supreme Court held in *Saintignon v. State*, 749 N.E.2d 1134 (Ind. 2001), that the trial court may suspend only the portion of a person's sentence that is in excess of the minimum sentence under I.C. 35-50-2-2.1 ("The Juvenile Record Suspension Statute") (see above). The *Saintignon* court further stated that the Juvenile Record Suspension Statute must be read in conjunction with I.C. 35-50-2-2 ("The General Suspension Statute"). The General Suspension Statute restricts the trial court's authority to suspend a sentence for specific enumerated offenses or if the defendant has a prior adult criminal record of a specified nature. The court believed that the Juvenile Record Suspension Statute's words "[e]xcept as provided in Section 2 (the General Suspension Statute) of this chapter" meant the Legislature intended the trial court to have the same authority to suspend a sentence in excess of the minimum sentence under the

Juvenile Record Suspension Statute as the trial court does in the General Suspension Statute.

It is also important to consider potential Apprendi implications. Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000) held that any fact that may increase the penalty for a crime beyond the statutory maximum must be presented to a jury and proved beyond a reasonable doubt. Apprendi also contained an exception that stated a prior conviction can be used to increase the penalty for a crime even though it is not submitted to a jury and proved beyond a reasonable doubt.

A new question has been presented since this decision. The question of whether a prior juvenile adjudication qualifies as a prior conviction. The circuits are currently split on the answer to this question. The United States Court of Appeals for the Ninth Circuit held in United States v. Tighe, 266 F.3d 1187 (2001) that the prior conviction exception in Apprendi only applies to prior convictions that contained the right to a trial by jury and proof beyond a reasonable doubt.

On the other hand, the United States Court of Appeals for the Eighth Circuit held in United States v. Smalley, 294 F.3d 1030 (2002) that the process for adjudicating juveniles in juvenile court has been held to satisfy constitutional standards and the judge must find guilt by a reasonable doubt. Therefore, a juvenile adjudication is considered a prior conviction for purposes of the Apprendi exception.

Finally, the United States Court of Appeals for the Third Circuit agreed with the Eighth Circuit in United States v. Jones, 332 F.3d 688 (2003) when it held that a nonjury juvenile adjudication that was afforded all constitutionally required procedural safeguards is considered a prior conviction for purposes of the Apprendi exception.

Positives/Support: Repealing I.C. 35-50-2-2.1 would not deny judges the ability to consider juvenile adjudications in sentencing determinations, but rather would afford judges the discretion to determine whether the juvenile adjudication warrants suspending a portion or all of a sentence in such adult cases.

Negatives/Opposition (Barriers to Implementation): The Juvenile Record Suspension Statute (I.C. 35-50-2-2.1) is a tool for holding adult offenders who have committed serious and/or repeated offenses as a juvenile in close time proximity (less than three [3] years) to the current adult offense(s) accountable.

Estimated Fiscal Impact/Recommendation Implementation Timeline: There is no estimated cost for this recommendation. It is proposed that this recommendation be implemented as a change to the Indiana Code to go into effect July 1, 2005.

Vote Results:

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Strongly Recommended (9 to 1)
Recommended (Majority Vote)
Noted (30% or More Vote)
Not Identified (<30% Vote)

Subcommittee Recommendation (#5)

Recommendation: It is recommended that Indiana code be reviewed and, if necessary, revised to ensure that it is not in violation with the Juvenile Justice and Delinquency Prevention Act of 2002.

Background/Justification: The specific issue raised in the ranked topical issues addressed whether handgun offenses should be included in the list of offenses excluded from the juvenile court jurisdiction (direct file offenses) under I.C. 31-30-1-4. This introduces a larger issue of a number of conflicts with the JJDPa within the current juvenile code. The handgun offense issue involves a conflict regarding the waiver or direct filing of a juvenile case for what would be a misdemeanor offense if committed by an adult. I.C. 35-47-2-1 Carrying a handgun without a license is a Class A misdemeanor and is currently included on the list of offenses that are excluded from juvenile court jurisdiction, thus required to originate under adult court jurisdiction. Past JJDPa regulations and soon to be released JJDPa 2002 regulations prohibit the detention of juveniles under adult court jurisdiction for offenses that would be misdemeanors if committed by adults. The underlying rationale from the JJDPa is that only juveniles who have committed serious offenses should be under adult court jurisdiction and eligible to be held in secure facilities in contact with adults. This particular change was not introduced by the Juvenile Law Commission as part of their recommended legislative changes to the juvenile code and would need to be added if recommended. Other issues that were introduced and included in the recommended legislative changes (see attached) of the JLC that are necessary to remain in or determine compliance with the JJDPa are discussed below. Definitions of facilities that either a) conflict with the JJDPa as currently defined, or b) are not included in the current juvenile code as necessary. This includes: 1) the definition of an adult "lockup" facility (Sections 8 & 29), and 2) Shelter Care facilities versus secure facilities for children and juvenile detention facilities (Sections 9, 12, 32, & 39). With regards to Co-Located facilities (adult and juvenile facilities located within the same building) corrections must be made in the language to correct past errors regarding sight/sound separation and additions must be made regarding the training of staff who work with both juvenile and adult populations in order to comply with the JJDPa (Section 14). The JJDPa of 2002 made a number of changes to what is referred to as the Valid Court Order (VCO) Exception which allows repeat status offenders to be held in secure facilities following a determination that they have indeed violated a valid court order from the juvenile court. The changes that are necessary involve the requirement of an interview by a court approved staff (e.g. probation officer, guardian ad litem) within 24 hours to determine the causes of the behavior and needs of the child, a probable cause hearing within 48 hours and a violation/disposition hearing within seven (7) days. Current Indiana code allows the VCO exception (without these necessary changes) for repeat runaways and repeat truants (excludes incorrigibles, alcohol offenders, curfew violators). The recommended changes by the JLC extended this to include allow repeat status offenders, but only allowed for commitment to the DOC for habitual runaways and truants as a last resort (Sections 10, 11, 40, 41, 42, 43). The final issues involves the reporting of intake, release and offense information for juveniles in all secure placements and the determination of secure/non-secure status of facilities. The JJDPa of 2002 requires that the State maintain an adequate system of monitoring facilities that house juveniles and determining whether the State is in

compliance with the mandates of the JJDP. Currently, facilities are not required to report compliance monitoring data to the Indiana Criminal Justice Institute and if submitted, it is done on a voluntary basis. The additions to the code included in Section 15 would provide the assurance that the State could adequately monitor facilities housing juveniles to ensure that both State and federal law are being followed with regards to the legal detention of juveniles.

Positives/Support: 1. Indiana would no longer be in jeopardy of losing Title II Formula Grant (\$1.2 million annually) and Title V Community Prevention Grant funds (\$300,000 annually).

Negatives/Opposition (Barriers to Implementation): 1. There is an underlying question of whether the State of Indiana continues to be in agreement with the JJDP and whether there is a consensus as to whether the State is willing to follow the requirements of the JJDP.

Estimated Fiscal Impact/Recommended Implementation Timeline: See the attached Fiscal Impact Statement conducted by Legislative Services Agency for SB0354 introduced in the Senate last year. It is proposed that SB0354, with the amendments recommended above, be reintroduced in the Legislature this year and go into effect July 1, 2005.

Vote Results:

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Strongly Recommended (8 to 0)
Recommended (Majority Vote)
Noted (30% or More Vote)
Not Identified (<30% Vote)

Subcommittee Recommendation (#6)

Recommendation: It is recommended that Indiana develop objective criteria to aid in the determination of whether to detain juveniles in secure detention. It is also recommended no changes be made to I.C. 31-37-6-9 regarding a juvenile's right to bail.

Background/Justification: Throughout the nineties, public opinion placed pressure on states to get tough on juvenile crime. Studies regarding juvenile crime suggested the idea of a new generation of teenage "superpredators" which formed this public opinion. The media reported that rates of gun violence and homicide involving juveniles were increasing. Although these reports are said to be based on faulty data, legislatures across the country listened to the public opinion and started a new campaign of "cracking down" on juvenile offenders. For more information please see the National Council on Crime and Delinquency's publication titled "Reforming Juvenile Justice Through Comprehensive Community Planning" available on NCCD's website.

This public pressure helped to increase the number of juveniles held in detention facilities. In fact, the Office of Juvenile Justice and Delinquency Prevention stated in their Detention in Delinquency Cases, 1989-1998, published in January, 2002, that between the time periods of 1989-1998, the growth in the volume of cases in the juvenile system involving detention had increased by 25%.

In the Pathways to Juvenile Detention Reform, which is a project of the Annie E. Casey Foundation, it is stated that there are two purposes for detaining a juvenile before he or she is sentenced: (1) to prevent the juvenile from committing a new crime before the disposition of his or her case, and (2) to ensure that the juvenile who is at risk of not showing up at court will be in court at the appointed time and day.

Pursuant to I.C. 31-37-6-9 a child may not be released on bail. The decision to detain a juvenile in a juvenile detention center is a three-tiered decision. The initial determination is made by law enforcement based upon very broad criteria in I.C. 31-37-5-3. An intake or probation officer reviews this decision based on the same broad criteria. Finally within 48 hours, there has to be a judicial determination based on similarly broad criteria in I.C. 31-37-6-6. In Indiana, the factors that law enforcement and the juvenile court at the detention hearing must take into account before detaining a juvenile delinquent are as follows:

- (1) the child is unlikely to appear for subsequent proceedings;
- (2) detention is essentially to protect the child or the community;
- (3) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child;
- (4) return of the child to the child's home is or would be:
 - (A) contrary to the best interests and welfare of the child; and
 - (B) harmful to the safety or health of the child; or
- (5) the child has a reasonable basis for requesting that the child not be released.

Sections (1) and (2) revolve around the purposes of detention; however, there is no guidance on how to make an objective determination on whether the juvenile will appear at his court date or re-offend. In *C.T.S. v. State of Indiana*, 781 N.E.2d 1193 (Ind. Ct. App. 2003), the juvenile court was found to have abused its discretion by keeping a juvenile in detention for four months stating that the juvenile would not appear for his next court date and detention is necessary to protect the child or the community. The juvenile court detained the juvenile despite repeated requests to be released from detention and upon evidence that the parents had hired a nanny to supervise the juvenile and the step-father had stated he would take a leave of absence from work to ensure the juvenile was constantly supervised. In order to ensure that juveniles are not detained needlessly, objective criteria needs to be put in place.

Additionally, I.C. 31-37-6-6 addresses home detention. It states that the juvenile court does not need to issue findings if the child is, among others, released and placed on home detention or electronic monitoring. Home detention is a restriction of liberty and its use should be supported by findings based on objective criteria relative to the stated purposes of pre-adjudicated detention.

Positives/Support:

1. The inclusion of bail in the juvenile justice system has the inherent danger of blurring the lines between adult and juvenile systems - thus potentially negating the important philosophical differences between these two systems. 2. With regards to bail for juveniles there are also questions regarding how a system of bail would work. For example, would this cause further division between the types of juveniles who would be kept in detention (those of lower socio-economic status whose parents are unable to bail them out) and those who would have the financial means to arrange bail. Related to this issue are concerns regarding the protection of child. For example, if a child is in danger from a parent would the parent then be able to "bail out" a child before a judge is able to evaluate the home situation and determine if the child should be released to the parent. This raises the question of who would be eligible to "bail out" a juvenile - individuals under the age of 18 or those over the age of 18, but not related to the child? 3. Support for not extending the right to bail, but rather the development of objective detention criteria (similar to a bail matrix in the adult system), include the need to be sure that the purposes of detention within and between counties is more uniformly applied to juveniles across the State. Specifically, the fact that we [juvenile justice systems] are not all working under the same "system" - meaning that the same juvenile can be treated differently with regards to detention depending on which county the child is under juvenile court jurisdiction. This raises the broader issue of consistent access to a general continuum of services across counties in Indiana. 4. Having an objective detention decision-making instrument, based on the purposed of detention outlined in the code, would provide for written findings regarding the detention decisions in juvenile courts across the state and could help to document whether juveniles are actually being placed in the least restrictive, most appropriate placement. This position still recognizes the need for judicial discretion in decision-making and the reality that in order to preserve public safety there are some juveniles who are dangerous and must be placed in secure settings (cannot be "one size fits all" system).

Negatives/Opposition (Barriers To Implementation):

1. There are concerns regarding the paradox in treatment that is created by our current system that denies bail to youth under juvenile court jurisdiction (theoretically for less serious offenses) yet provides the opportunity for bail to juveniles under adult court jurisdiction (theoretically for more serious offenses such as the list of direct file offenses that includes murder, rape, armed robbery, etc.). 2. There are also concerns that the current denial of bail to juveniles coupled with a pervasive lack of representation based on often uninformed or coerced waiver of counsel may actually lead to "coerced" admissions by juveniles to simply "get out" of detention. This raises a related concern regarding the purposes of detention under the current code and whether detention is truly being used to preserve public safety and ensure future appearances, but instead may be used as a form of social control or pre-adjudicatory punishment, thus violating the underlying rights of juveniles outlined in the seminal case of *In Re Gault*. 3. The development of criteria for detention decision-making may not be well received amongst juvenile justice stakeholders - being seen as a reduction in judiciary discretion and potentially tying the hands of local decision-makers when taking into account the unique needs of each youth in particular cases.

Estimated Fiscal Impact/Recommended Implementation Timeline: Initially the implementation of objective detention criteria may have little fiscal impact. But once institutionalized, and if used correctly, could reduce local detention costs that could/should then be used to develop a recommended continuum of community-based non-secure alternatives. A workgroup of key juvenile justice stakeholders (e.g. judges, prosecutors, public defenders, probation officers, detention directors, etc.) led by the Indiana Judicial Center, under the guidance of the Supreme Court, should be appointed to begin the development of an objective detention decision-making instrument. This process could also be informed by results of the State's participation in the Annie E. Casey Detention Alternatives Project and it is recommended that the State seriously consider participation in this project. It is recommended that the Detention Criteria Workgroup be appointed and begin work by January 1, 2005 and that the launch of a detention criteria instrument be ready for piloting by January 1, 2006.

Vote Results:**Strongly Recommended (10 - 0)****Recommended (Majority Vote)****Noted (30% or More Vote)****Not Identified (<30% Vote)**

Subcommittee Recommendation (#7)

Recommendation: It is recommended that there be no change in the current statutory requirements for a change of judge for delinquency cases (quasi-criminal = "for cause") and CHINS, paternity, & TPR (civil = no cause).

Background/Justification: I.C. 31-32-8-1 states "Except as provided in Section 2 of this chapter, a change of judge may be granted only for good cause shown by affidavit at least twenty-four (24) hours before the fact-finding hearing." This statute is in direct conflict with Indiana Trial Rule 76(B) which states "in civil actions, where a change may be taken from the judge, such change shall be granted upon the filing of an unverified application or motion without specifically stating the ground therefor by a party or his attorney."

This inconsistency has been addressed by the Indiana Supreme Court for CHINS cases and recently by the Court of Appeals for delinquency cases. In *State ex rel. Gosnell v. Cass Circuit Court*, 577 N.E.2d 957 (Ind. 1991), the Supreme Court invalidated a former version of I.C. 31-32-8-1 (previously 31-6-7-9) and replaced the statute with the requirements for Indiana Trial Rule 76(B). This case involved a CHINS matter.

On the other hand In the Matter of *T.H. v. State of Indiana*, ___ N.E.2d ___ (2004-342), the Court of Appeals distinguished *Gosnell* by stating it was a CHINS proceeding and not a delinquency proceeding. I.C. 31-32-1-3 provides that in cases not subject to section 1 (delinquent child) or section 2 (person charged with a crime), the Indiana Rules of Trial Procedure will apply in all matters not covered by the juvenile law. However, I.C. 31-32-1-1 states "if a child is alleged to be a delinquent child, the procedures governing criminal trials apply in all matters not covered by the juvenile law." Additionally, the Court noted that Crim. Rule 12(B) provides that the party seeking a change of judge must file an affidavit that the judge has a personal bias or prejudice against the state or defendant. The Court held that a juvenile requesting a change of judge must file an affidavit showing cause regardless of whether the juvenile is proceeding under I.C. 31-32-8-1 or Crim Rule 12(B).

Positives/Support: 1. While there does appear to be "conflict" in the current standards for change of judge between delinquency and CHINS, paternity & TPR cases within the juvenile court, it appears that in this case such a distinction (rather than a conflict) is desirable to protect the rights of juveniles and families appearing before judges in multiple CHINS or TPR related cases, which are civil in nature rather than delinquency cases, which are quasi-criminal and require a higher standard for a change of judge. 2. Requiring counsel and families to show cause in CHINS and TPR cases may unnecessarily create an adversarial or "criminal court" atmosphere in such cases, potentially leading to judicial bias in such cases. Brings into question whether the rights of parents in such TPR cases are being fully protected and whether a judge involved with a previous CHINS proceeding involving the same family can be unbiased in the TPR case.

Negatives/Opposition (Barriers to Implementation):

1. Continuing to allow for a change of judge in CHINS, paternity and TPR cases may put an undue burden on courts, particularly small rural court systems with limited juvenile court judiciary experience or jurisdiction, to secure an appropriate replacement in a timely fashion. 2. Continuing with the current system of change of judge without cause in CHINS, paternity, and TPR cases may not follow the philosophical tenets of the state's child welfare system, in that the best interests of the child [not the parent(s)] should be the guiding principle. This also contradicts the basic philosophical underpinnings of the family court model(s) currently being used in a number of Indiana counties. For example, in the Family Court model of one-family, one-judge it is assumed that the same judge that has seen a family under a delinquency petition, in a divorce case, and a CHINS cases would also be the best judge to hear the subsequent TPR case based upon their intimate knowledge and understanding of that family's circumstances.

Estimated Fiscal Impact/Recommended Implementation Timeline: The recommendation is actually "no change" and thus a fiscal impact is not applicable and implementation is not required.

Vote Results:**Strongly Recommended (10 - 0)****Recommended (Majority Vote)****Noted (30% or More Vote)****Not Identified (<30% Vote)**

Subcommittee Recommendation (#8)

Recommendation: Indiana law sets many time limits for various proceedings in delinquency and CHINS proceedings; however, Indiana law does not address time limits for dispositional hearings in delinquency proceedings or the filing of a CHINS petition, fact-finding hearing and dispositional hearing in CHINS proceedings. It is recommended that parallel time limits be established where they have not been addressed in Indiana statutes for both CHINS and delinquency proceedings. The specific recommendations are as follows:

-It is recommended that a new statute be added to the Indiana Code (31-34 and 31-37) that would ensure that dispositional hearings in both CHINS and delinquency cases take place no later than 30 days after the adjudication, unless waived by counsel or family. It is further recommended that a similar provision be added to the juvenile code that would establish the same time limit for modification of dispositions for both CHINS and delinquency proceedings.

-It is recommended that a new statute be added to the Indiana Code (31-34 and 31-37) that would ensure that the initial hearing take place not later than 10 days from the time the child is taken into custody and no later than 30 days from the filing of the petition if the child is not taken into custody.

-It is recommended that a new statute be added to the Indiana Code (31-34) to mirror the current delinquency code (31-37-11-2) which requires that if a child is in custody and a petition alleging delinquency has been filed, a fact-finding hearing must occur no later than 20 days after the petition is filed excluding Saturdays, Sundays, and legal holidays and that if not in custody the fact-finding hearing must occur no later than 60 days after the petition is filed, excluding Saturdays, Sundays, and legal holidays. It is further recommended that a similar provision be adopted to mandate the same time limits for modification proceedings as well for both CHINS and delinquency.

Background/Justification: The statutory time limits for delinquency proceedings in Indiana are as follows, all time periods exclude Saturdays, Sundays and legal holidays unless otherwise noted:

I.C. 31-37-6-2 states that if a child is not released from detention, a detention hearing must be held no later than 48 hours after the child is taken into custody.

I.C. 31-37-11-1 states that a petition alleging delinquency for a child in detention must be filed no later than 7 days after the child is taken into custody.

I.C. 31-37-11-2 states that if a child is in detention and a petition alleging delinquency has been filed, a fact-finding hearing or a waiver hearing must occur no later than 20 days after the petition is filed. Additionally if the child is not in detention and a petition has been filed, the hearing must be held no later than 60 days after the petition is filed.

I.C. 31-37-11-3 states if waiver is denied, a fact-finding hearing must be held no later than 10 days after the denial of the waiver.

Indiana law currently does not set time limits for the dispositional hearing in delinquency proceedings.

The statutory time limits for CHINS and termination of parental rights hearings in Indiana are as follows, all time periods exclude Saturdays, Sundays and legal holidays unless otherwise noted:

I.C. 31-33-8-1 states the local child protection service shall initiate an investigation for a victim of child abuse immediately, but no later than 24 hours after receipt of the report; for a victim of child neglect within a reasonably prompt time, but no later than 5 days after receipt of the report; if the immediate safety or well-being of the child appears to be endangered, the investigation shall be initiated regardless of the time; and if the child is in imminent danger of serious bodily harm, the investigation shall be initiated within an hour. These time limits are not subject to Saturdays, Sundays and legal holidays.

I.C. 31-34-5-1 states if a child is not released from detention, a detention hearing shall be held no later than 48 hours of taking the child into custody.

I.C. 31-34-10-9 states that if the allegations of a CHINS petition are admitted, the juvenile court may hold a dispositional hearing immediately after the initial hearing. Additionally, if the allegations of the CHINS petition have been denied, the juvenile court may hold the fact-finding hearing immediately after the initial hearing.

I.C. 31-34-15-2 states the county office of family and children shall complete a case plan no later than 60 days after negotiating with the child's parent, guardian or custodian.

I.C. 31-34-21-2 states the juvenile court must hold review hearings once every six months. The first hearing must occur either six months after the date of the child's removal from the home or six months after the date of the dispositional decree, whichever comes first.

I.C. 31-34-21-7 states the juvenile court shall hold a permanency hearing no more than 30 days after a court finds that reunification of the family is not necessary or every 12 months after the date of the original dispositional decree or the date the child was removed from the home, whichever comes first.

In order to file a petition to terminate the parental rights pursuant to I.C. 31-35-2-4, the child must have been removed from the parent for at least six months under a dispositional decree or the child has been removed from the parent for at least 15 of the most recent 22 months.

Indiana law currently does not set time limits for the filing of a CHINS petition, the fact-finding hearing or the dispositional hearing.

Ohio and Washington use time limits in delinquency and CHINS proceedings. The following statutes from Ohio and Washington are used just for comparison purposes.

Ohio Revised Code (ORC) § 2151.28 states that the court shall fix a time for an adjudicatory hearing within 72 hours of the filing of the complaint. If the child is in detention, the hearing shall not be held later than 15 days after the filing of the complaint. If the case is a neglect or abuse case, the hearing shall be held no later than 30 days after the complaint is filed.

ORC § 2151.31 states an informal detention hearing or shelter care hearing shall be held no later than 72 hours.

ORC § 2151.35 states that after the abuse/neglect adjudicatory hearing, the disposition hearing shall be held no later than 30 days. Additionally, the judgment shall arrive within 7 days of the disposition hearing. Finally, the disposition hearing shall not be held more than 90 days after the date of the filing of the complaint.

However, ORC § 2151.35 is not as clear in delinquency proceedings. It states that if the court finds the juvenile a delinquent or unruly child, "the court shall proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition."

The Revised Code of Washington (RCW) is not clear on delinquency time limits either. RCW 13.40.050 states the detention hearing must be held within 72 hours.

RCW 13.40.130 states the disposition hearing shall be held within 14 days after the adjudicatory hearing or the plea of guilty. If the child is not in detention, this time limit can be extended to 21 days. RCW is silent on the time limits for the adjudicatory hearing.

Washington is more specific as to CHINS cases. RCW 13.34.060 states the shelter care hearing must take place within 72 hours.

RCW 13.34.070 states the fact-finding hearing shall take place no later than 75 days after the filing of the CHINS petition.

RCW 13.34.110 states the court shall hold the disposition hearing immediately after the entry of the findings of fact unless there is good cause to continue the disposition. However, the disposition can only be continued for up to 14 days.

RCW 13.34.134 states if the court orders the filing of the petition to terminate parental rights, the permanency planning hearing must be held within 30 days of that order.

RCW 13.34.145 states there shall be a permanency planning hearing for all cases where the child has remained out of the home for at least 9 months and there has not been an adoption decree, guardianship order or permanent order regarding the child. This hearing shall take place no later than 12 following the commencement of the current placement of the child.

Positives/Support:

1) It is beneficial to implement similar time limitations for the CHINS and delinquency proceedings as in the adult system to ensure that juveniles are not languishing in custody, particularly pre-adjudication. Similarly, there is a need to ensure that initial hearings for both juveniles in custody or not are set so that juveniles are not "falling through the cracks" or get "lost in the system" 2) An issue related to juveniles languishing or "getting lost in the system" that further supports the need for time specific limitations in juvenile proceedings is the concept that lack of understanding by juveniles regarding the process and how it will proceed can be counter-intuitive to the therapeutic model that many juvenile placements are trying to promote.

Negatives/Opposition (Barriers to Implementation):

1) Such time constraints may be extremely difficult, particularly for small jurisdictions due to lack of staff time and for large jurisdictions due to caseload volume, to meet, while still collecting the information necessary to inform the decision-making stages of proceedings (e.g. collection of information in order to make informed decisions from the pre-dispositional report at dispositional hearings, already overloaded CPS caseworkers unable to meet current deadlines, etc.). 2) Time specific limitations, particularly in CHINS proceedings, can reduce the need for flexibility in cases to meet both the needs of the family and the court to achieve the most beneficial outcome for both parties.

Estimated Fiscal Impacts/Recommended Implementation Timeline: The estimated fiscal impact of implementing specific time limitations for both CHINS and delinquency proceedings through statutory changes would need to be further investigated. It is recommended that a comprehensive survey of the key stakeholders to be affected by the changes (e.g. courts, probation, local OFC offices) and an analysis of current budgetary and caseload/workforce to determine: 1) How many jurisdictions are already staying within the prescribed time limits on an informal basis, thus indicating negligible fiscal impact; and 2) How many jurisdictions are not meeting these time limits, why and what changes would need to be made to meet these time limits, be conducted collaboratively by the Indiana Judicial Center and FSSA/DFC. The results of this survey and analysis will help to inform the decisionmaking of legislators across the State. It is recommended that this research be completed by late Summer 2005 and that the legislative changes recommended above be introduced as legislation to become effective July 1, 2006.

Vote Results:☒
☐
☐
☐

Strongly Recommended (7-0)
Recommended (Majority Vote)
Noted (30% or More Vote)
Not Identified (<30% Vote)

Subcommittee Recommendation (#9)

Recommendation: Indiana currently has two statutes relating to determinate sentencing of juveniles to the Department of Correction. These statutes are IC 31-37-19-9 and IC 31-37-19-10. Please see attached statutes and administrative code sections.

It is recommended that the laws regarding determinate sentencing be eliminated from the Indiana Juvenile Code.

Background/Justification: IC 31-10-2-1 states the general purpose of the juvenile justice code:

Sec. 1. It is the policy of this state and the purpose of this title to:

- (1) recognize the importance of family and children in our society;
- (2) recognize the responsibility of the state to enhance the viability of children and family in our society;
- (3) acknowledge the responsibility each person owes to the other;
- (4) strengthen family life by assisting parents to fulfill their parental obligations;
- (5) ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation;
- (6) remove children from families only when it is in the child's best interest or in the best interest of public safety;
- (7) provide for adoption as a viable permanency plan for children who are adjudicated children in need of services;
- (8) provide a juvenile justice system that protects the public by enforcing the legal obligations that children have to society and society has to children;
- (9) use diversionary programs when appropriate;
- (10) provide a judicial procedure that:
 - (A) ensures fair hearings;
 - (B) recognizes and enforces the legal rights of children and their parents; and
 - (C) recognizes and enforces the accountability of children and parents;
- (11) promote public safety and individual accountability by the imposition of appropriate sanctions; and
- (12) provide a continuum of services developed in a cooperative effort by local governments and the state.

IC 31-37-19-9 and IC 31-37-19-10 set forth factors allowing the juvenile court to confine a juvenile in the DOC for a determinate time. 210 IAC 5-1-2 states "Requirements for discharge from commitment shall be as follows: (1) determinate sentence juveniles shall be discharged by the administrative review committee in accordance with the commitment order." However, 210 IAC 5-1-3 sets forth the procedure for juveniles that are not in DOC based on determinate sentencing to either be released to community supervision or discharged. The administrative review committee reviews the recommendations of the juvenile's treatment team regarding the juvenile's progress in treatment and the committee interviews the juvenile when determining release to community supervision or discharge from DOC.

Generally, juveniles committed to the DOC must satisfactorily complete their treatment program prior to release or discharge. Thus, the length of their commitment

is dependent upon their progress in their treatment program. However, juveniles committed to DOC under a determinate sentencing order know that they will be released in accordance with the commitment order and therefore do not have incentive to succeed at their treatment program. Because the policy of the state of Indiana is to "ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment and rehabilitation", juveniles should be given the incentive to succeed with their treatment program.

Positives/Support: 1) Particularly with the changes implemented in the DOC delivery of services/treatment for juveniles committed to the Department, it becomes extremely important that facility staff have the discretion to treat juveniles and have them complete the program in order to be released. Determinate sentencing, then, runs contrary to the purposes of treatment and juveniles under such sentences do not have an incentive to complete the program, such as an in the adult system with "good time" credit (this does not exist for juveniles). 2) Related to juveniles' behavior while committed to the DOC, is their behavior in local detention centers while awaiting placement at a DOC facility. Detention centers report that juveniles under determinate sentences awaiting placement can be extremely disruptive and difficult to control due to the lack of accountability for their behavior while in detention as it will not affect the length of time at DOC or their treatment plan. 3) Determinate sentencing in the juvenile system can lead to the release of dangerous juveniles or juveniles who are still in need of treatment.

Negatives/Opposition (Barriers to Implementation): 1) Determinate sentencing should continue to remain an option for the very serious crimes (e.g. rape, kidnapping, robbery) committed by 13-15 years old that would not be automatically in the adult court jurisdiction. This is necessary to send the message that such crimes will be treated seriously. 2) Eliminating determining sentencing further chips away at the discretionary power of the local juvenile court to determine the length of stay for serious juvenile offenders. 3) A related, but different concern involves the length of time that a less serious offender who does not follow the DOC treatment plan could potentially spend at a DOC facility (until age 21).

Estimated Fiscal Impact/Recommended Implementation Timeline: Any fiscal impact of eliminating determinate sentencing would be negligible as it would lead to both an increase as well as a decrease in the amount of time that certain juvenile offenders would spend in a DOC facility, thus likely leading to a null impact. It is recommended that legislation be introduced to eliminate determinate sentencing to become effective July 1, 2005.

Vote Results:

☒
☐
☐
☐

Strongly Recommended (6 to 1)
Recommended (Majority Vote)
Noted (30% or More Vote)
Not Identified (<30% Vote)

Subcommittee Recommendation (#10)

Recommendation: IC 31-37-19-6 sets forth the time limits that a juvenile can be placed in the juvenile detention center. Indiana law is unclear whether consecutive periods of confinement in a juvenile detention facility may be imposed for multiple offenses within a single delinquency petition or multiple delinquency petitions adjudicated together (i.e. consecutive sentences).

It is recommended that Indiana Code be amended so that the court may not order consecutive periods of confinement in a juvenile detention facility during a single disposition or for related offenses.

Background/Justification: IC 31-10-2-1 states the general purpose of the juvenile justice code:

Sec. 1. It is the policy of this state and the purpose of this title to:

- (1) recognize the importance of family and children in our society;
- (2) recognize the responsibility of the state to enhance the viability of children and family in our society;
- (3) acknowledge the responsibility each person owes to the other;
- (4) strengthen family life by assisting parents to fulfill their parental obligations;
- (5) ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation;
- (6) remove children from families only when it is in the child's best interest or in the best interest of public safety;
- (7) provide for adoption as a viable permanency plan for children who are adjudicated children in need of services;
- (8) provide a juvenile justice system that protects the public by enforcing the legal obligations that children have to society and society has to children;
- (9) use diversionary programs when appropriate;
- (10) provide a judicial procedure that:
 - (A) ensures fair hearings;
 - (B) recognizes and enforces the legal rights of children and their parents; and
 - (C) recognizes and enforces the accountability of children and parents;
- (11) promote public safety and individual accountability by the imposition of appropriate sanctions; and
- (12) provide a continuum of services developed in a cooperative effort by local governments and the state.

IC 31-37-19-6 limits the amount of time a juvenile can be confined in a juvenile detention center. For a child less than 17 years of age, the confinement must be the lesser of 90 days or the maximum term of imprisonment that could be imposed on an adult for the same act. For a child at least 17 years of age, the confinement must be the lesser of 120 days or the maximum term of imprisonment that could be imposed on the adult for the same act.

Indiana law is currently unclear on whether a juvenile can be confined in a juvenile detention center based on a consecutive sentencing scheme. It is recommended that this issue be addressed by enacting a law stating that consecutive sentencing schemes are not allowed under Indiana law. One substantial difference between juvenile law

and criminal law is that a juvenile is adjudicated a delinquent child rather than being convicted of a crime. An adult can be convicted of numerous crimes arising from the same set of circumstances; however, a juvenile can only be adjudicated a delinquent child once out of the same or similar set of circumstances.

Positives/Support:

1) Currently the Judicial Benchbook is silent regarding the issue of consecutive adjudications to local detention centers. As described above, the current code indicates a limit of 90 days for juvenile offenders under the age of 17 and 120 days for those 17 and older. It is the interpretation of some of the members of this subcommittee that while the code is silent on whether consecutive adjudications are allowable, that interpreting that silence to mean that such a practice is allowable is counterintuitive. While the subcommittee felt that this practice is isolated rather than widespread, the members felt that an affirmative statement in the code prohibiting such a practice is necessary. 2) This issue raises similar questions as Recommendation #6 with regards to a need for objective decision making criteria for placement in secure detention. The purposes of detention need to be more clearly defined and the reasons for placing juveniles in local detention for even the allowable 90 - 120 days should be provided at adjudication. This also relates to the question of "time served" in local detention prior to the adjudication.

Negatives/Opposition (Barriers to Implementation):

1) There is need to take into consideration the quality of local detention centers across jurisdictions and the level of services that can be provided in one jurisdiction while not in another. Allowing consecutive adjudications in jurisdictions that have the availability of quality treatment and educational services within a juvenile detention facility provides local juvenile courts with the discretion and flexibility to meet the needs of their offenders.

Estimated Fiscal Impact/Recommended Implementation Timeline: The estimated fiscal impact of adding an affirmative statement prohibiting consecutive periods of confinement in a juvenile detention facility during a single disposition or for related offenses should be negligible as the use of this practice is isolated and should effect few jurisdictions leading to reduced detention costs in these specific jurisdictions, unless such jurisdictions choose to utilize the DOC as an alternative confinement option. It is recommended that legislation be introduced to prohibit consecutive periods of confinement in a juvenile detention facility to become effective July 1, 2005.

Vote Results:

- | | |
|-------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | Strongly Recommended (7 to 0) |
| <input type="checkbox"/> | Recommended (Majority Vote) |
| <input type="checkbox"/> | Noted (30% or More Vote) |
| <input type="checkbox"/> | Not Identified (<30% Vote) |

Subcommittee Recommendation (#11)

Recommendation: I.C. 20-8.1-5.1-12 sets out the procedure to follow in order to suspend a student. I.C. 20-8.1-5.1-13 sets out the procedure to follow in order to expel a student. Finally, I.C. 20-8.1-5.1-15 sets out the scope of judicial review for expulsion and suspension proceedings. H.B. 1228 died in committee during the past legislative session. This bill afforded students more protection during expulsion proceedings and expanded the scope of judicial review for expulsion proceedings. Please see the attached statutes and failed H.B. 1228.

Indiana has quite a few statutes and rules in effect regarding grounds for suspension or expulsion. I.C. 20-8.1-5.1-8 through I.C. 20-8.1-5.1-10 describes grounds for suspension and expulsion. Additionally, 511 IAC 7-29-1 through 511 IAC 7-29-4 describe how to handle disciplinary issues for special education students. Please see attached statutes.

It is recommended that H.B. 1228 be passed in its entirety. It is further recommended that schools use a graduated sanctions disciplinary program that allows administrators to discipline students on a case-by-case basis.

It is also recommended that IC 21-3-6-1.1 be amended to include an additional ADM (average daily membership) Count to be conducted by Indiana school corporations on February 1st of each year.

Background/Justification: Indiana is currently ranked first in expulsions in the United States. Additionally, Indiana is ranked ninth in out-of-school suspensions. For more information regarding expulsions and suspensions in Indiana, please see Education Policy Briefs, Unplanned Outcomes: Suspensions and Expulsions in Indiana, Vol. 2 No. 2 – Summer 2004.

Current Indiana law governing expulsion proceedings gives students and their parents' limited rights. Students and parents have the right to receive notice of the right to appear at an expulsion meeting. The notice contains the reasons for the expulsion and the procedures for requesting an expulsion meeting. If there is an expulsion meeting, the person conducting the hearing must make a written summary of the evidence heard at the meeting, take appropriate action and give notice of the action to the student and parent. Within 10 days of the receipt of the notice of action, the student or parent may make a written appeal to the governing body. The governing body will then hold a meeting to consider the written summary of the evidence and the arguments of the principal and the student or parent. However, the governing body may vote not to hear an appeal in which case the student or parent may appeal only to the circuit or superior court.

A student does not currently have the right to counsel in a school disciplinary proceeding. *Lake Central School Corp. v. Scartozzi*, 759 N.E.2d 1185 (Ind. Ct. App. 2001). If the student brings counsel to the expulsion meeting, counsel will not be allowed in the meeting. One of the reasons the court in *Scartozzi* used for not allowing counsel in disciplinary proceedings is the cost to the school corporations to pay for legal counsel if students started bringing counsel into expulsion meetings. The court

reasoned that the presence of counsel would turn the expulsion meeting into a “quasi-judicialized procedure”.

Failed H.B. 1228 expanded rights for students and parents. Some examples of these expanded rights are that the notice to the parents should contain a summary of the evidence that will be presented against the student at the expulsion meeting, the notice should indicate the penalty requested by the principal, and the notice should contain a statement informing the parent that the parent can examine the student's academic and disciplinary records, any affidavits to be used at the meeting and the parent has the right to know the witnesses that will appear against the student.

H.B. 1228 also revised the procedure for an expulsion hearing. The bill expanded the attendees of the meeting to include the student's representative who may be an attorney. The bill also addresses issues such as witness testimony and cross-examination. Additionally, the bill states that the rules of evidence or any other courtroom procedures do not apply to the meeting. Finally, the school corporation is allowed to have their legal counsel at the expulsion meeting to advise either the principal or the person conducting the meeting; however, if legal counsel advises the person conducting the meeting, legal counsel may not act as the principal's counsel.

I.C. 20-8.1-5.1-15 governs judicial review of an expulsion. Indiana law currently limits judicial review of an expulsion meeting to whether the governing body acted without following the procedure. Failed H.B. 1228 expanded the scope of judicial review by stating the parent or student could appeal to the circuit or superior court if the governing body acted without following the procedure, arbitrarily or capriciously, without substantial evidence, or unlawfully.

I.C. 20-8.1-5.1-10 states if a student brings a firearm or destructive device to school or on school property, the student must be expelled for at least one calendar year. However, the superintendent may modify the period on a case-by-case basis. Additionally if a student brings a deadly weapon or is in possession of a deadly weapon on school grounds, the student may be expelled for a period of one calendar year. Neither of these rules calls for “zero tolerance”, but that is how some school corporations are applying expulsion rules. Please see the attached story entitled “My Own Personal Tolerance Nightmare in Indiana”. Adam's story was taken from www.ztnightmares.com which is an internet forum set up for those who have had problems with zero tolerance policies across the country.

Positives/Support: 1) When Indiana removed the due process protections from the suspension/expulsion process in the mid-90's this was unprecedented for a State, compared to other states, Indiana needs to return the same due process protections to this process afforded to students around the nation. For the 2000-2001 school year Indiana ranked ninth in out of school suspensions and first in nation for its rate of school expulsions as reported by the Center for Evaluation and Education Policy.2) Tying the addition of a second ADM (average daily membership) count requirement to this recommendation sends an important message that schools should no longer be able to wait until after the first ADM count that occurs within the first 30 days of school to begin suspending or expelling students. The addition of a second ADM count tied to the funding levels will be further incentive to attempt reintegrative or

alternative school strategies with students experiencing difficulty in the traditional school setting.

Negatives/Opposition (Barriers to Implementation):

1) There is considerable resistance by local school corporations to both the passage of HB 1228 and to an additional ADM count. There continue to be arguments that how data is collected and reported in Indiana misrepresents how the state compares nationally in rates of suspension/expulsion. Also there is data which indicates that a disproportionate number of suspensions (over 50%) are within a very small percentage of school corporations (10%) as reported by the Center for Evaluation and Education Policy. 2) Although it was conceded in the Subcommittee that this may not be representative of all jurisdictions, there are those jurisdictions that only use suspension/expulsion for those students that are engaging in serious violations that would be criminal if brought to the attention of the juvenile court (i.e. battery, drug use, etc.)

Estimated Fiscal Impact/Recommended Implementation Timeline: Fiscal impact was completed for HB 1228 during the last legislative session. The statement indicated that the bill would increase the administrative responsibilities of local schools, as more information would be required in the expulsion notification to parents as well as the required notification of any action taken within 48 hours. While the impact statement indicated that these provisions should have minimal impact to local expenditures, that it would require more administrative time to gather the required information. With regards to the judicial review allowed by the bill, the impact statement indicated that if additional civil actions were pursued by parents of expelled students, school corporations would absorb increased services by an attorney and the potential payment of any judgments against the school (see the attached fiscal impact statement completed by the Legislative Services Agency). With regards to the additional ADM count, this would have a potential to increase the administrative time spent to conduct the additional count and would have a potential fiscal impact on schools that have a reduced ADM between the first and second ADM count. It is recommended that both HB 1228 and the changes to IC 21-3-6-1.1 be introduced this legislative session and to become effective July 1, 2005.

Vote Results:

- | | |
|-------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | Strongly Recommended (7 to 0) |
| <input type="checkbox"/> | Recommended (Majority Vote) |
| <input type="checkbox"/> | Noted (30% or More Vote) |
| <input type="checkbox"/> | Not Identified (<30% Vote) |

Subcommittee Recommendation (#12)

Recommendation: Current Indiana Code does not allow for an order of parental participation under either delinquency or CHINS proceedings until the dispositional phase of the process. IC 31-37-19-24 and IC 31-34--20-3 indicate that when ordering parental participation as part of a disposition the court may order the parents to obtain assistance in fulfilling their parental obligations, provide specific care, treatment or supervision, and participate in a program operated by the Department of Correction. IC 31-32-2-3 provides for the basic due process rights of parents when being placed under an order of parental participation. The following recommendation would recommend that these basic due process rights outlined in IC 31-32-2-3 apply to new statutory language that would allow for orders of parental participation earlier in the CHINS and delinquency process.

It is recommended that a new statutory language be added to both the CHINS and delinquency statutes which states that: "The court having juvenile court jurisdiction may order parental participation if it is found with clear and convincing evidence that the health, safety, and well-being of the child(ren) in the home requires an order of parental participation pre-adjudicatory. If a child is out of the home (in custody) the court having juvenile court jurisdiction may order pre-adjudicatory parental participation if there is found to be clear and convincing evidence that such parental participation is necessary to facilitate the safe reunification of the child(ren) with the family/guardian." It is further recommended that additional language be added that would ensure that any violation of a pre-adjudicatory order of parental participation would not be admissible in subsequent criminal or civil proceedings.

Background/Justification: The Indiana Code sets forth the applicable statutes when requiring parental participation in a CHINS case or delinquency case. IC 31-37-15-1 applies to standing for delinquency cases and IC 31-34-16-1 applies to standing for CHINS cases. Both statutes state:

Any of the following may sign and file a petition for the juvenile court to require the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for the child:

- (1) The prosecuting attorney.
- (2) The attorney for the county office of family and children.
- (3) A probation officer.
- (4) A caseworker.
- (5) The department of correction.
- (6) The guardian ad litem or court appointed special advocate.

Additionally, IC 31-32-2-3 sets forth the rights of a parent, guardian or custodian during proceedings to determine whether the parent, guardian, or custodian of a child should participate in a program of care, treatment, or rehabilitation for the child. IC 31-32-2-3 states:

- (a) This section applies to the following proceedings:
- (1) Proceedings to determine whether a child is a child in need of services.
 - (2) Proceedings to determine whether the parent, guardian, or custodian of a child should participate in a program of care, treatment, or rehabilitation for the child.

(3) Proceedings to determine whether the parent or guardian of the estate of a child should be held financially responsible for any services provided to the parent or guardian or the child of the parent or guardian.

(4) Proceedings to terminate the parent-child relationship.

(b) A parent, guardian, or custodian is entitled:

(1) to cross-examine witnesses;

(2) to obtain witnesses or tangible evidence by compulsory process; and

(3) to introduce evidence on behalf of the parent, guardian, or custodian.

Finally, the juvenile court can order participation by the parent, guardian or custodian in both delinquency and CHINS cases. IC 31-37-19-24 and IC 31-34-20-3 both state:

If the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to:

(1) obtain assistance in fulfilling the obligations as a parent, guardian, or custodian;

(2) provide specified care, treatment, or supervision for the child;

(3) work with a person providing care, treatment, or rehabilitation for the child; and

(4) participate in a program operated by or through the department of correction.

There is relatively little case law on the issues of parental participation and due process. The case law focuses on the violation of due process rights when parental participation orders do not follow the statutory framework. *A.E.B. v. State*, 765 N.E.2d 536 (Ind.Ct.App. 2001) states that the juvenile court must follow statutory procedures before ordering parental participation.

In the Matter of A.W., 756 N.E.2d 1037 (Ind.Ct.App. 2001) reinforces the fact that the juvenile court must follow the statutory framework before ordering parental participation. In this case, A.W. was “charged with delinquency/runaway on numerous occasions.” After A.W. was adjudicated, she ran away again. The juvenile court ordered A.W. be made a ward of the county which the juvenile court later clarified as making A.W. a CHINS only for purposes of placement in the delinquency proceeding. Additionally, DFC was ordered to develop a plan to unify A.W. with her mother or father. The mother and the father were ordered to participate in family counseling and maintain contact with A.W. while she was in placement. On review, the progress report reflected that the father had had no contact with A.W. and did not participate in any services. A subsequent CHINS petition was filed due to allegations by A.W. of sexual misconduct by the father. This CHINS petition alleged that all of the father and stepmother’s children were CHINS, including A.W. However, the juvenile court held the initial hearing on all the children, except for A.W. The juvenile court mentioned at this time that A.W. had passed a lie-detector test regarding the allegations of sexual misconduct by her father.

A notice of a Permanency Hearing was filed in the delinquency proceeding. A progress report was made by DFC which included the fact that the father had not participated in any services, continued to deny the allegations of sexual misconduct, and has had no contact with A.W.. The father and stepmother filed a Motion to Strike Document regarding the DFC report stating that it contained allegations based upon inadmissible evidence (the lie-detector test), that the allegations of sexual abuse were pending in the CHINS case and that there was not a notice or claim of any wrongdoing on the part of

the father or the stepmother. After the motion was heard and after the permanency hearing in the delinquency proceeding, the juvenile court ordered the father and stepmother to obtain assessments and follow any services recommendations. Additionally, the juvenile court gave the father and stepmother immunity from any prosecution in criminal or juvenile court proceedings with regard to any information found in the assessment and services.

On appeal, the father and stepmother argued that the juvenile court did not follow the proper statutory procedures for an order of parental participation which violated their due process rights. In its decision, the Court stated that IC 31-37-15-1 and IC 31-37-16-1 outline the procedure for filing a petition with the juvenile court to require parental participation. The Court stated that by filing this petition, the parent is placed on notice that the juvenile court may make an adjudication that affects the parent. Additionally, the Court stated the father and stepmother were not afforded the rights as guaranteed by IC 31-32-2-3 which provides parents the rights to cross-examine witnesses, obtain witnesses or tangible evidence, and to introduce evidence on behalf of the parent.

The Court also stated that there is a problem with other portions of Title 31, specifically IC 31-37-14-3, which states “any pre-dispositional report may be admitted into evidence to the extent that the report contains evidence of probative value even if the report would be excluded.” Because in this case the reports contained evidence that would otherwise be inadmissible, there are even more due process concerns where the allegations constitute criminal conduct or conduct which impairs the rights of parents. Finally, the Court also concluded that because the assessments and subsequent counseling could lead the revelation of criminal matters, the juvenile court did violate the father and stepmother’s due process rights.

Positives/Support: 1) Would allow for courts to connect families to services at the point of initial contact when they are more likely to have a positive effect on the outcome of the proceeding and potentially reduce the amount of time required to resolve either a CHINS or delinquency matter. 2) This would allow the courts to have the flexibility to order parental participation earlier in the process which would act to both increase the accountability of parents in the process and in meeting their parental obligations, thus ultimately serving the needs of the child(ren). For example, parental participation pre-adjudicatory while a child is placed out of the home would help to ensure that parents are attempting to rectify current conditions so that the child can be more quickly reunified if possible.

Negatives/Opposition (Barriers to Implementation): 1) Orders of parental participation pre-adjudicatory can be construed as a violation of the parent's due process rights - particularly in the case of CHINS proceedings where participation in a particular program or service order by the court (e.g. drug testing) could be used against the parent during the fact-finding phase of the case. 2) Ordering parental participation by itself will not improve the outcomes of cases, the system must be able to support the family in meeting those orders and have an understanding that some familial stressors will not be resolved overnight (e.g. drug addicted parent). There must be easily accessible services for parents to access once ordered to participate in a

program of care, treatment or rehabilitation. If this does not occur then the system may simply be setting parents up for, yet another, failure.

Estimated Fiscal Impact/Recommended Implementation Timeline: The fiscal impact of earlier orders of parental participation should negligible at best. Local expenditures for services to families and children in need of services or delinquent could theoretically increase, but ultimately if cases were positively resolved before the fact-finding or adjudication this could act to decrease local expenditures. If such services are necessary pre-adjudicatory, the argument would be that such services would have ultimately been ordered as part of the adjudication thus leading to a null effect. It is recommended that legislation be introduced to allow for orders of parental participation pre-adjudicatory to become effective July 1, 2005.

Vote Results:

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☐
☐
☐

Strongly Recommended (10 - 1)
Recommended (Majority Vote)
Noted (30% or More Vote)
Not Identified (<30% Vote)